

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

FILED-CLERK  
U.S. DISTRICT COURT

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TEXAS-EASTERN

BY \_\_\_\_\_

BENJAMIN WAYNE MCCOIN

§

VS.

§

CIVIL ACTION NO. 4:05cv185

DIRECTOR, TDCJ-CID

§

MEMORANDUM OPINION REGARDING TRANSFER

Petitioner Benjamin Wayne McCain, an inmate confined at the Hughes Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, brings this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.<sup>1</sup> The case was referred for findings of fact, conclusions of law and recommendations for the disposition of the case

Discussion

Title 28 U.S.C. § 2254(a) allows a district court to “entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a). A state prisoner is required to file his federal petition for writ of habeas corpus in either the district where the prisoner is incarcerated or the district where the prisoner was convicted and sentenced. 28 U.S.C. § 2241(d). Although both district courts have jurisdiction to entertain the application, “[t]he district court for the district wherein such an application is filed in

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<sup>1</sup> The Petitioner filed this case on a form petition generated for prisoners seeking relief from a federal conviction under 28 U.S.C. § 2255. The Petitioner complains about his 2000 conviction for attempted capital murder in Red River County. In addition to his state conviction, the Petitioner complains about two federal cases that had been brought against him, No. 3:02cr16 and No. 6:94cr60. However, both of the federal cases were dismissed prior to trial. Because the Petitioner is not in custody pursuant to a federal sentence, Section 2255 does not offer him any relief. Therefore, the petition should be construed as a petition for writ of habeas corpus, brought pursuant to 28 U.S.C. § 2254, against the Director of the Texas Department of Criminal Justice, Correctional Institutions Division.

the exercise of its discretion and in furtherance of justice may transfer the application to the other district court for hearing and determination." *Id.*

The Petitioner filed this petition in the Beaumont Division of the Eastern District of Texas. However, the Petitioner was convicted and sentenced in Red River County which is located in the Texarkana Division.

The Court has considered the circumstances and has determined that the interest of justice would best be served if this petition were transferred to the division where the Petitioner was convicted and sentenced. Therefore, the petition should be transferred to the Texarkana Division of the Eastern District of Texas for hearing and determination. An order transferring the case will be entered by the undersigned.

SIGNED this 29 day of August, 2005.

  
DON D. BUSH  
UNITED STATES MAGISTRATE JUDGE